

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Applications of WorldCom, Inc. and)
MCI Communications Corporation for)
Transfer of Control of MCI)
Communications to WorldCom, Inc.)
_____)

CC Docket No. 97-211

REPLY OF CABLE & WIRELESS PLC

On May 28, 1998, Cable & Wireless plc ("C&W) and MCI Communications Corporation ("MCI") announced an agreement whereby C&W will purchase from MCI its Internet backbone business.¹ On June 3, 1998, MCI filed with the FCC an *ex parte* statement describing that transaction in the above-captioned docket, which is considering the application for approval of the MCI-WorldCom merger.² On June 4, 1998, the Commission issued a Public Notice seeking comment on the MCI *ex parte* filing.³ Nine such comments were filed on June 11, 1998.⁴ C&W, by its attorneys, offers the following Reply to those comments.

I. C&W's EXISTING TELECOMMUNICATIONS AND INTERNET BUSINESSES

C&W today is one of the world's leading telecommunications companies. Its revenues in 1997 were approximately \$12 billion, nearly double those of WorldCom and about two-thirds as

¹ Press Release dated May 28, 1998, "Cable & Wireless To Buy MCI's Internet Backbone and ISP Service Business."

² Letter from Mary L. Brown, Senior Policy Counsel, MCI Telecommunications Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated June 3, 1998.

³ Public Notice DA 98-1059, released June 4, 1998.

⁴ Comments were filed by AT&T Corp., Sprint Corporation, the Communications Workers of America, Bell Atlantic, Telstra Corporation LTD., BellSouth Corporation, GTE Service Corporation, Simply Internet, Inc., and the Internet Service Providers Consortium.

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large as MCI. C&W offers a myriad of telecommunications services to over 17 million customers in over 70 countries around the world, including a complete array of services within the U.S.

Last year, Cable & Wireless, Inc. ("CWI"), C&W's U.S. subsidiary, realized more than \$1.1 billion in revenue from approximately 100,000 U.S. customers; CWI employs about 2,300 people and is one of the ten largest long distance carriers in the U.S. To provide these services, CWI operates a nationwide fiber optic network utilizing over 100,000 DS-3 route miles with a mixture of owned and leased facilities

C&W provides Internet services in the U.K., Hong Kong, Australia, Asia, the Middle East and the Caribbean. C&W operations worldwide sent approximately 400 mbs of Internet traffic to the U.S. last year. However, C&W is not a significant participant in the U.S. Internet backbone market today. Because it does not qualify for Tier 1 status, C&W's ability to expand this business significantly within any reasonable timeframe without an acquisition is severely limited. With its purchase of the MCI Internet backbone business, C&W can automatically expand the functional capacity of the acquired assets by combining its own planned international hubs in Asia and Europe into the existing MCI system.

II. THE C&W-MCI TRANSACTION

As described in the MCI *ex parte*, the C&W acquisition consists of 22 nodes, 15,000 interconnection ports, and all routers, switches and other related equipment currently comprising the MCI Internet backbone. In addition, C&W will acquire the right to use the transmission capacity needed to operate the network, the right to use all associated dedicated software and operations support systems, Internet addresses, collocation rights to maintain the equipment, and approximately 50 employees dedicated to running the Internet backbone. Further, C&W will

acquire the 1,300 Internet Service Provider customers of MCI and 40 peering arrangements with other backbone providers. MCI will purchase from C&W backbone capacity to serve MCI's retail Internet customers.

Additionally, C&W will receive MCI's contractual agreement to lease Internet transmission capacity to C&W on commercially competitive terms for two years, with the option to extend the arrangement for another three years. This agreement includes domestic transmission facilities, as well as international private line circuits. MCI also has agreed to extend its current peering agreement with C&W on a long-term basis.

After consummating its acquisition of the MCI Internet backbone, C&W intends to operate the business in conjunction with its existing businesses. These assets, when combined with other C&W operations around the world, will make C&W one of the four largest providers of Internet backbone in the U.S. C&W expects to integrate the newly acquired assets and customers into its existing operations as quickly as possible and to continue to expand this business aggressively. Indeed, since C&W is already a major supplier of wholesale services to other telecommunications companies, C&W believes that the acquisition of 1300 ISPs, who in turn provide Internet services to their customers, provides an excellent addition to C&W's current wholesale business. It is with this plan in mind that C&W agreed to purchase the MCI backbone network.

III. REGULATORY IMPLICATIONS OF THE C&W ACQUISITION

A. THE C&W-MCI AGREEMENT REQUIRES NO FCC APPROVAL

The agreement between C&W and MCI for the transfer of MCI's Internet backbone business is, in essence, a contract for the transfer of telecommunications equipment, software, employees, and Internet Service Provider customers, coupled with an agreement between

companies for the reciprocal provision of certain Internet-related services. There is neither transfer of an FCC-authorized entity (nor any entity for that matter), nor a transfer of customers of any regulated service.

Because no regulated entity or customer is being transferred, no application for approval has been filed with the Commission. Only one of the commenting parties has challenged this conclusion. However, as demonstrated below, C&W believes that Telstra is mistaken in its assumptions regarding the proposed transaction.

Telstra contends that the lease of transmission facilities between C&W and MCI involves regulated private line services and, therefore, demands FCC oversight or approval. This contention is incorrect for several reasons. First, the exchange of services between two carriers is not a common carrier undertaking subject either to the tariffing requirements of Section 203, 47 U.S.C. § 203, or the contract filing requirements of Section 211, 47 U.S.C. § 211. If Telstra's reading of the law were correct, every lease of facilities or services from one carrier to the other would have to be filed with the Commission, and the agency would soon be inundated with paper. For example, any purchase of a resale carrier which included a contract for the purchase of service from an underlying carrier would have to be examined to determine whether the purchase price reflects tariff terms and conditions. Hundreds of such transactions have occurred over the past 15 years, with no FCC examination of the underlying resale contract. Moreover, Telstra cites no prior example of an exchange of facilities agreement involving Internet backbone capacity which has required FCC approval or tariffing.

The fact that neither MCI nor C&W is a "dominant" carrier also contradicts Telstra's claim that some FCC oversight of the transmission facility aspect of the Internet backbone arrangement is required. As non-dominant interstate carriers, MCI and C&W are both presumed

to be incapable of the kind of discrimination which Telstra alleges it fears.⁵ Notably, Telstra does not allege that either MCI or C&W possesses facilities or services which it cannot obtain from another provider. Thus, even if the arrangement were subject to FCC oversight, Telstra has not shown any market power in the private line market which would merit regulation of non-dominant companies.

Further, the services provided to MCI's ISP customers who are being transferred are non-common carrier services outside the scope of the FCC's Title II jurisdiction. Other than the fact that questions have been raised in the context of the MCI-WorldCom merger application, the FCC would have no legal interest in the C&W-MCI arrangement at all. In the case of Telstra, it appears that its interest lies not in the MCI-WorldCom merger, but in the availability of international private lines at particular prices or terms and conditions. This proceeding is not the proper forum for such concerns.

B. THE COMMENTS IGNORE THE SCOPE AND SOPHISTICATION OF C&W'S TELECOMMUNICATIONS BUSINESS

The theme of most of the remaining eight comments is that the C&W acquisition of MCI's Internet backbone is insufficient to remedy the alleged threat of Internet domination posed by the MCI-WorldCom merger. Without opining on the ultimate issue of the desirability of the underlying merger (MCI and WorldCom remain in the best position to discuss the relative benefits of their transaction), C&W wishes to correct the erroneous suggestion that it will be an ineffectual competitor vulnerable to MCI's recapture of the transferred customers at any time. In fact, nothing could be further from the truth. C&W is confident that it can provide services to

⁵ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Fourth Report and Order, 95 F.C.C. 2d 554 (1983).

the acquired customers which will be equal to or better than those currently provided by MCI. It is C&W's expectation that it will significantly expand the Internet business over the next five years -- not sit and watch it wither and return to MCI.

The development of an integrated international Internet business is central to C&W's global strategy. C&W is determined to ensure that every one of its business units obtains a significant Internet presence within its respective market. And, because more than 80 percent of the Internet traffic that is transmitted internationally today must be routed through the Internet backbone in the U.S., participation in the U.S. market is of great strategic importance to C&W's worldwide business plan. By becoming a "Tier 1" player -- something that C&W will find difficult except by acquisition -- C&W will be well-positioned to provide vigorous price competition in the Internet backbone market.

There can be no doubt: C&W will be committed to the U.S. Internet backbone market. With the ongoing migration of voice and data communications to private Internet-based networks and to maintain its competitive position and serve its worldwide customer base, C&W must have a competitive backbone service to deliver new products and services. The acquisition of MCI's U.S. Internet backbone assets fills a key need of C&W's worldwide telecommunications strategy. The acquisition will immediately take C&W, already a major worldwide force in the telecommunications industry, into the top ranks of U.S. Internet competitors.

C&W's track record of successful competition with entrenched dominant providers demonstrates its ability to operate the MCI Internet backbone effectively. In the U.K., Cable & Wireless Communications ("CWC") (formerly Mercury Communications) was the first competitor to the entrenched monopolist, British Telecom. Today, CWC is a thriving carrier, pioneering products such as Web-TV. In Australia, Optus Communications is the major

competitor to Telstra, obtaining a market share exceeding 20 percent in just over five years.

Indeed, C&W is a major provider of telecommunications services around the globe, including in the U.S. While Internet services are just one of the many offerings provided by C&W to its more than 17 million customers worldwide, the company is also recognized as one of the premier providers of Internet services outside the U.S.

Hong Kong Telecommunications, a Cable & Wireless Company, is the largest Internet Service Provider in Hong Kong, serving over 300,000 subscribers. The company also provides integrated Internet/Intranet solutions, backbone facilities and online services. In addition, C&W is the leading supplier of ISP services in the Caribbean, serving over 15 of the major islands. In Australia, Optus, a company in which Cable & Wireless has a 49 percent share, offers Internet wholesale services that carry over 40 percent of Australia's wholesale Internet traffic. Optus also provides direct connect services to corporate and government customers, has just acquired a dial-up ISP and is testing a high-speed cable modem to both residential and business customers for Internet use. In Europe, CWC is the largest provider of integrated telecommunications and television entertainment services in the United Kingdom. The company is one of the largest carriers of wholesale telecommunications traffic in the U.K. and the thirteenth largest carrier of international traffic in the world. C&W also has a growing Internet presence in the Middle East. Bezeq International is the second largest supplier of IP services into and out of Israel, and C&W operates IP services through companies in Bahrain.

In the U.S., CWI offers a wide range of voice, data, messaging and Internet services. The company currently offers high speed dedicated connectivity ranging from 56Kbps to 1.544 Mbps via frame relay or private lines. Services include Electronic Mail, Domain Name, IP addresses, registration services and Internet News. The company has over 70 peering arrangements and offers dedicated Internet access from 42 cities in the U.S.

The suggestion that C&W cannot effectively operate the backbone network which it has agreed to acquire with the transfer of only 50 MCI employees falsely assumes that C&W currently has no qualified personnel already on staff to assist in this undertaking. In fact, C&W has more than adequate facilities and personnel to operate the purchased backbone network. CWI already has 45 people supporting the existing frame/internet backbone specializing in areas of engineering, network management, provisioning and trouble isolation. The company has 15 marketing positions dedicated to supporting data and Internet products, which are sold by over 600 sales representatives located in 34 cities.

Another company, Cable & Wireless OMNES ("C&W OMNES"), also has substantial experience in Internet services. Based in Houston, Texas, the company has more than 500 employees dedicated to the Internet business. C&W OMNES has helped more than 20 companies around the world to build businesses in the Internet domain. The company has developed its own unique platform, and specializes in services ranging from Internet access to managed Intranet applications and systems consulting services. C&W anticipates that C&W OMNES will help transition the MCI Internet backbone assets into the existing C&W group and provide any technical expertise needed to run the business.

In short, C&W employs over 37,000 people in more than 70 countries. Assertions that the company does not have (and is not acquiring) the resources necessary to run the MCI Internet business are patently untrue. In fact, C&W believes that there is no company with the equivalent global reach and in-house resources which is better positioned to become a successful competitor in the global Internet marketplace.

CONCLUSION

The C&W-MCI agreement for the sale of the MCI Internet backbone business does not require FCC review or approval. The single commenting party that suggests otherwise is simply wrong in its reading of the Communications Act.

The other commenters are interested in opposing the MCI-WorldCom merger, not the C&W acquisition of MCI's Internet backbone. Those commenters offer a variety of arguments to support their claim that this arrangement is not sufficient to remedy alleged flaws in that merger. While C&W leaves to MCI and WorldCom the refutation of those opponent's competitive analyses of their merger, C&W wishes to emphasize that the C&W-MCI arrangement should not be viewed as less than what it is. C&W is a formidable competitor with nearly 70 years of experience, a worldwide customer base of 17 million, \$12 billion in revenue and an outstanding record of customer service. C&W intends to use the acquired Internet backbone as the basis of an aggressive effort to expand its global Internet businesses, and the company is well-equipped to achieve that goal.

In short, C&W is committed to maintaining – indeed improving – the competitive viability of the acquired assets, and it has the substance and vision to do just that. C&W will make the investments required to expand and improve the acquired Internet backbone business and to incorporate the acquired assets seamlessly into a global telecommunications system.

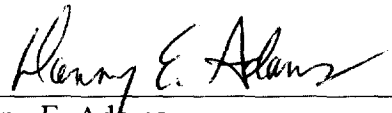
Respectfully submitted,

CABLE & WIRELESS PLC

Madeleine Elizabeth Wall
Group Director of Legal and
Regulatory Affairs
CABLE & WIRELESS PLC
124 Theobalds Road
London WC1X 8RX
United Kingdom

Rachel J. Rothstein
Vice President Regulatory
and Government Affairs
CABLE & WIRELESS, INC.
8219 Leesburg Pike
Vienna, Virginia 22182

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By: 

Danny E. Adams
Rebekah J. Kinnett
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served by hand this 16th day of June, 1998 on the following:

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036



Rebekah J. Kinney